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June 30, 1987

The Honorable Don Aldridge
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I87-090 (R87-051)

Dear Representative Aldridge:

You have asked our advice concerning the authority of the county boards of supervisors and the judges of the Superior Court in determining the annual budgets for the Superior Court in the several counties.

Our opinion is that the Superior Court is subject to the general budget law applicable to the county boards of supervisors respecting budget limits, increases and reductions set by the boards so long as the boards' actions do not prevent the Superior Court from performing its authorized duties, except, however, for expenditures that the Constitution or statutes of the State of Arizona expressly authorize the Superior Court to incur. With respect to those expenditures, the Superior Court is not subject to the budget laws applicable to counties; the Superior Court is required to act reasonably and in good faith when incurring the expenditures.

The Arizona Supreme Court, on several occasions, has considered the authority of the Superior Court and the county boards of supervisors concerning Superior Court expenditures for the operations of the Superior Court. Powers and Isley, 66 Ariz. 94, 183 P.2d 880 (1947); Lockwood v. Board of Supervisors of Maricopa County, 80 Ariz. 311, 297 P.2d 356 (1956); Birdsall v. Pima County, 106 Ariz. 266, 475 P.2d 250 (1970); Broomfield v. Maricopa County, 112 Ariz. 565, 544 P.2d 1080 (1975); Deddens v. Cochise County, 113 Ariz. 75, 546 P.2d 811 (1976).

In Powers v. Isley, the Supreme Court considered the meaning and effect of statutes under which each judge of the

Superior Court was authorized to appoint a court reporter whose salary the judge was authorized to fix with the approval of the board of supervisors of the county. The five judges of the Maricopa County Superior Court, acting jointly and in agreement, determined that the proper salary for each of the court reporters would be $3,600 per year and submitted their determination to the Maricopa County Board of Supervisors. The Board of Supervisors neither approved nor disapproved the salary fixed by the judges, but proceeded on its own to reduce the salary to $3,300. The Supreme Court held that the Maricopa County Board of Supervisors had exceeded its authority in reducing the salary fixed by the Superior Court. In responding to the contention of the board of supervisors that the Constitution and statutes of Arizona contemplated that the final fixing of salaries of all officers, deputies, clerks and assistants who are paid from county funds should be left to the discretion of the legislative department of the counties, i.e. the boards of supervisors, the Supreme Court upheld the authority of the legislature to authorize the judiciary to act in matters relating to the functioning of the judiciary. The Court said that when an independent branch of the government is delegated the power to fix the compensation of employees in that branch, another branch of the government cannot usurp that function on the grounds that it shall give "approval." In striking the balance between the Superior Court and the board of supervisors, the court set the tone for the relationship between the two with these words:

> The province of the Board of Supervisors in connection with the approval of the salary fixed by the judge as provided in Sec. 19-404, is interpreted to be that the Board of Supervisors have the power to approve or disapprove the salary fixed by the judge for the court reporter. That in performing this duty the Board of Supervisors must exercise discretion, but they must act in a reasonable manner and not arbitrarily or capriciously in disapproving such salary. Neither must the judge in fixing the salary act arbitrarily or capriciously or unreasonably.

Id., 66 Ariz. at 106, 183 P.2d at 888.

Nine years after Isley, the Supreme Court addressed the relationship between the Maricopa County Superior Court and the

Maricopa County Board of Supervisors in the operation of the Juvenile Code in Lockwood v. Board of Supervisors of Maricopa County. Under the Juvenile Code the legislature had authorized the Superior Court to appoint a chief probation officer, deputy probation officers and necessary office assistants and to fix their salaries subject to the approval of the board of supervisors. The legislature also had authorized the Superior Court to allow by order a reasonable sum at the expense of the county for the support and medical care of children over whom the Superior Court had jurisdiction. The Supreme Court held that when the Superior Court legally made appointments and fixed salaries approved by the board of supervisors and when the Superior Court ordered support and medical care allowances for juvenile wards of the Court as authorized in the Juvenile Code, the expenses thereby incurred became legal obligations of the county and must be paid even though the aggregate of such salaries or support orders might exceed the budget provided therefor under the budget law. The Court said:

> The basic reasons for excepting these obligations from the limitations of the budget law is that they are public charges fixed by law, the incurring of which is beyond the control of the board of supervisors. They are placed in the category of charges fixed by law and must be paid even though they exceed the budget estimate for the current year. If such excess occurs, the same must be cared for in the succeeding budget.

Id., 80 Ariz. at 314, 297 P.2d at 357-358.

The Court in Lockwood went on to say that the board of supervisors, on the other hand, may control the purchase and operation of county property and prescribe adequate identification thereof so long as the "control does not come within the orbit of hampering action that would prevent the court from operating as contemplated by the juvenile code." Id., 80 Ariz. at 315, 297 P.2d at 358.

In 1970, the Superior Court again called upon the Supreme Court in Birdsall v. Pima County to resolve a dispute with the Pima County Board of Supervisors over the fixing of salaries for employees of the Superior Court. At the time of the initiation of the action the presiding judge of the juvenile

court division of the Superior Court was authorized by statute to appoint employees of the court and fix their salaries with the approval of the board of supervisors.[1]

The Supreme Court held that the Pima County Board of Supervisors had a ministerial duty to approve the Superior Court's order fixing new salaries for the employees of the Court in the absence of a clear showing that the Superior Court acted unreasonably, arbitrarily and capriciously in fixing the salaries. The Supreme Court, in discussing the issue of reasonableness, said that although the board of supervisors could not reduce or increase the salary or change the implementation date, the board could take issue with the date, the Supreme Court observing that a Superior Court may be unreasonable, arbitrary and capricious in entering an order to implement a new salary schedule during the middle of the fiscal year instead of setting the effective date at the beginning of the next fiscal year. The Court said, "An orderly fiscal policy is a government necessity and to order an increase in excess of budget provisions might be unreasonable, arbitrary and capricious." Id., 106 Ariz. at 269, 475 P.2d at 253.

Next, the Supreme Court in Broomfield v. Maricopa County, considered the authority of the Superior Court to appoint a deputy adult probation officer. In his April 1, 1975 budget request to the Maricopa County Board of Supervisors, the presiding judge of the Superior Court in Maricopa County requested funding for the position. On August 10, 1975, the Superior Court appointed the deputy adult probation officer. On August 12, 1975, the Board of Supervisors advised the Superior Court that the Board had approved the budget for the adult probation department on August 11, 1975, that the position of deputy adult probation officer had not been funded and that the Superior Court would have to operate within the budget as approved. On September 5, 1975, the Superior Court issued an order directing the Board of Supervisors to implement the appointment, which the Board refused to do.

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[1] The Supreme Court in its opinion noted that the legislature subsequent to the commencement of the action had changed the law to provide that the salaries of juvenile court employees in each county shall be fixed by the county board of supervisors, but the Court declined to consider the effect of the change.

The Supreme Court held that the appointment of probation officers is a matter that the legislature had vested exclusively with the Superior Court under A.R.S. § 12-251, and that the board of supervisors is required by law, as a ministerial duty, to provide the funds necessary to pay the salaries of the probation officers appointed by the Superior Court pursuant to A.R.S. § 12-251. The Court held further that the board of supervisors could challenge the action of the Superior Court only by seeking relief from the Supreme Court by the filing of a special action during which the board of supervisors "would have to make a clear showing that the decision was unreasonable, arbitrary or capricious . . . ." Id., 112 Ariz. at 568, 544 P.2d at 1083. Because the board of supervisors had not sought special action relief in the Supreme Court, the Supreme Court refused to consider the Board's challenge to the Superior Court's appointment in the Superior Court's special action against the board.

Most recently, in Deddens v. Cochise County, the Supreme Court affirmed an order of the Superior Court in Cochise County made pursuant to A.R.S. § 12-252 raising the salaries of the chief and deputy adult probation officers. The Supreme Court held that the board of supervisors' obligation to pay the increased salaries was mandated by A.R.S. § 12-252 and therefore was not limited by the budget law (A.R.S. § 43-302). The Court refused to consider the board of supervisors' argument that the action of the Superior Court was "unreasonable, arbitrary and capricious at a period of time of economic depression and diminished tax revenues" (Id., 113 Ariz. at 76, 546 P.2d at 812), because the board of supervisors had failed to file a special action in a timely manner in the Supreme Court to challenge the actions of the Superior Court.

The underlying principle of constitutional law that guides the legislative and judicial departments in their relations respecting the funding of the judicial department appears best summed up in the following quote from Deddens:

> It is an ingrained principle in our government that the three departments of government are coordinate and shall cooperate with and complement, and at the same time act as checks and balances against one another but shall not interfere with or encroach on the authority or within the province of the other. The legislative and executive departments have their functions and their exclusive powers, including the 'purse' and

the 'sword'. The judiciary has its exclusive powers and functions, to-wit: it has judgment and the power to enforce its judgments and orders. In their responsibilities and duties, the courts must have complete independence. It is not only exiomatic [sic], it is the genius of our government that the courts must be independent, unfettered, and free from directives, influence, or interference from any extraneous source. It is abhorrent to the principles of our legal system and to our form of government that courts, being a coordinate department of government, should be compelled to depend upon the vagaries of an extrinsic will. Such would interfere with the operation of the courts, impinge upon their power and thwart the effective administration of justice. These principles, concepts, and doctrines are so thoroughly embedded in our legal system that they have become bone and sinew of our state and national polity.

"'[T]he courts have the inherent power to carry on their functions so that they may operate independently and not become dependent upon or a supplicant of either of the other departments of government, and may incur necessary and reasonable expenses in the performance of their judicial duties and, in cases such as this one, it is the plain ministerial duty of those who control the purse to pay such expenses except only where the amounts are so unreasonable as to affirmatively indicate arbitrary and capricious acts. . . . ." Mann v. County of Maricopa, 104 Ariz. at 564-565, 456 P.2d at 934-935.

Deddens v. Cochise County, 113 Ariz. at 77-78, 546 P.2d at 813-814.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:FWS:lp